EDITOR'S NOTE

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NO. 90-651

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

MICHAEL E. PLUNKETT , PETITIONER

AND

LANE + KNORR + PLUNKETT, ARCHITECTS AND PLANNERS; LANE + KNORR + PLUNKETT, INVESTMENT COMPANY, A/K/A/ LKP INVESTMENT COMPANY,

PLAINTIFFS

v.

FEDERAL DEPOSIT INSURANCE CORPORATION, RECEIVOR OF FIRST INTERSTATE BANK OF ALASKA; FIRST INTERSTATE BANCORPORATION; FIRST INTERSTATE BANK OF OREGON,

RESPONDANTS.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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OCTOBER 16, 1990.

Rule 14.1 (a): Questions Presented for Review:

1. Can Appellate Court ignore questions presented for review in affirming District Court action?

2. Can District Court and Appellate Court ignore Affidavits on file , verified pleadings in granting and affirming Summary Judgment?

3. Can Appellate Court ignore Appeal of denial of Motions to Amend complaint in affirming summary Judgment?

4. Can Appellate Court (9th Circuit) continue to deprive a non prisoner, pre se litigant of equal protection by its continued failuire to provide local rules or amend local rules and/or otherwise advise pro se litigants of the substantive requirements (i.e the necessity of making a prima facie case) to avoid summary sudgment, while the 10th circuit has ruled the opposite (that non-prisoner pro se litigants are entitled to advice of substantive requirements?

5. Can the Appellate Court Judges rule on a case despite apparant conflicts of interest and appearance of impropriety and oherwise inability to exercixe thier independant judgment in the case at bar?

6. Can the Appellate Court ignore the religious issues in affirming the lower Court?

7. Whether Court's actions and judgment constitute denial of equal protection and due process toward plaintiff.

8. Whether the Court of Appeals sanctioning District Court's granting of summary judgment on Federal antitrust and RICO claims so far departed from accepted and usual course of judicial proceedings as to call for this court's power of supervision?

9. Whether, in light of the nationwide banking and savings and loan crisis, various District and Appellate Courts have decided important questions of

Antitrust, RICO, equal protection and due process questions which should be settled by the Supreme Court ?

10. Whether Appellate Court so departed from accepted and usual course of judicial proceedings in affirming lower court's granting of summary judgment on pendant and ancillary claims as to call for exercise of this court's power of supervision?

11. Alternatively, if District Court's granting of summary judgment on pendnat and ancillary claims was procedurally proper, was Appellate Court's affirmation of said action a denial of due process and equal protection?

12. Whether the Appellate Court's affirmation of District Court's granting of summary judgment to Defendant Federal Deposit Insurance Corporation prior to opposition by Plaintiff was a denial of equal protection and due process and/or so far departed from the accepted and usual course of judicial proceedings as to call

for an exercise of this Court's power of supervision?

13. Whether appellate court's affirmation of Judgment, and failure to address question for review by Plaintiff of lack of notice to pro se Plaintiff of substantive evidentiary changes necessary to oppose Motions for Summary Judgment was sufficient departure from the accepted and usual course of judicial proceedings as to warrant exercise of this Court's power of supervision?

14. Alternatively, if the above actions by the District and Appellate Courts are not "so far departed from the accepted and usual course of judicial proceedings as to all for an exercise of this court's power of supervision", then are said usual and accepted course of judicial procedings not in themselves a denial of equal protection and due process?

Rule 14.1.(b) List of Parties:

Plaintiff- Appellant: Michael Edward Plunkett, on his own behalf and on behalf of his partnership interest in Lane + Knorr + Plunkett Investment Company ("LKP Investments") (Plaintiff) and Lane + Knorr + Plunkett Architects and Planners (Plaintiff).("LKP Architects")

Defendants/ Appellees: 1. Federal Deposit Insurance Corporation as receivor for First Interstate Bank of Alaska, ("FIBA") formerly Alaska Bank of Commerce. ("ABC")

2. First Interstate Bank of Oregon,("FIBO") formerly First National Bank of Oregon.

3. First Interstate Bancorp,("FIBC") parent of FIBO, franchisor of FIBA. Other Known subsidiaries of FIBC are First Interstate Bank of Washington, Arizona, Montana, Alaska (new corporation), Wyoming, Idaho_____.

Unknown defendants, Does 1-100 were excluded by District Court in Second Revised Amended Complaint. CR___.

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CASES

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1990

MICHAEL E. PLUNKETT , Petitioner

and

LANE + KNORR + PLUNKETT Architects and Planners; LANE + KNORR + PLUNKETT, Investment Company, a/k/a/ LKP Investment Company

Plaintiffs

v.

FEDERAL DEPOSIT INSURANCE CORPORATION, Receiver of First Interstate Bank of Alaska; FIRST INTERSTATE BANCORPORATION; FIRST INTERSTATE BANK OF OREGON,

Respondants

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The Petitioner, Michael Edward Plunkett, Pro Se, on his own behalf and on behalf of his partnership interests in Lane + Knorr + Plunket Investment Company and Lane + Knorr + Plunkett

Architects and Planners respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit, entered in the above titled proceeding on May 16, 1990.

Rule 14.1 (d) Opinions in this Case Delivered by Other Courts.

1. Order (Summary Judgment Granted), Case A84-387, U.S. District Court for Alaska, filed 15 May 1989, CR 118. 8 pages.

2. Memorandum Opinion, 9th Circuit Court of Appeals, Case No. 89-35500, submitted,(oral argument unanamously cancelled by the Court), May 11, 1990), (Friday),filed May 16, 1990 (Wednesday).5 pages.

3. Order, U.S. Court of Appeals, 9th Circuit, Case 89-35500, wherein a majority of the panel voted to deny petition for rehearing and rejecting suggestion for rehearing en banc. Filed July 18, 1990. 1 page.

Rule 14.1 (e) Grounds for Invocation of this Court's Jurisdiction:

(i) Entry of Judgment: May 16, 1990.

(ii) Order denying Rehearing: July 18,1990.

(iv) Statuatory provision conferring jurisdiction of this Court to review the judgment and affirmation thereto: 28 U.S.C. 1254(1).

Rule 14.1 (f). Constitutional Provisions, Statutes, involved in the case: (See Appendix for verbatim pertinent text).

1. Constitutional Provisions:

Article VI, Amendments 1, 7, 11, 14.

2. Statuatory Provisions.

a. 15 U.S.C. 1 et seq. Sherman Act

b. 15 U.S.C. 13 et seq. Clayton Act

c. 18 U.S.C. 1962 et seq. RICO

d. 28 U.S.C. 455 et seq. Disqualification of justice, judge etc.

3. Federal Rules of Civil Procedure ("FRCP"), 15, 41, 50, 56

4. Local Rules, U.S District Court for Alaska, Rule 5, Motions & other Matters.

5. Alaska Statutes:

45.50.471 et seq. Consumer Protection

45.50.531

45.50.571 Restraint of Trade

11.41.530 Extortion

11.41.520 Coercion

6. Alaska Rules of Civil Procedure ("ARCP") 56 (Summary Judgment)

Rule 14.1 (g) Concise Statement of the Case:

Nature of the Case

These are Sherman Antitrust, Clayton, RICO and State tort, contract and statuatory (restraint of trade, consumer protection, usury) violation claims against a bank holding company, First Interstate Bankcorporation, ("FIBC"), its wholly owned subsidiary First Interstate Bank of Oregon (formerly First National Bank of Oregon) ("FIBO"), and a FIBC franchisee First Interstate Bank of Alaska (formerly Alaska Bank of Commerce), ("FIBA"), now Federal Deposit Insurance Corporation ("FDIC") as Receiver.

2. Course of Proceedings

After Plaintiff read of jury verdict in Wilcox v. First Interstate Bank of

Oregon 590 F.Supp 445,447 (D. OR. 1984) later 815 F 2d 522 (9th Cir 1987) ("Wilcox") in May 1984, Complaint verified to best of knowledge and belief (Affidavit of Michael E. Plunkett) hereafter "AMTP" 9/10/84 paragraph 2. Court Record," CR", 4(Included in Appendix hereafter "App.") with three exhibits was filed on September 10, 1984, CR 1 with Motion for TRO. CR 4. TRO was denied for lack of irreparable harm and improbable success on the merits. CR 5. FIBA was served and answered. CR 8. Wilcox defendants granted Judgment N.O.V. Wilcox Development v. First Interstate Bank of Oregon. 605 F. Supp 592-597 (DC Or. 1985) Plaintiff in Wilcox appealed.

Plaintiff moved to amend to include Anchorage School District "ASD" CR 10, verified in affidavit of Oct. 11, 1985. CR @ 9-10 (App.) . Court denied Motion to Amend to include ASD and denied TRO on grounds one Plaintiff (LKP Investments) had filed Chapter 11 Bankruptcy (later

dismissed). CR 13 (App.).

This Court ruled on Wilcox, in 1987, which parties in this case were awaiting to determine direction to proceed. Wilcox paved way to move to certify class action Plaintiffs and to plead RICO by amendment. (Oregon District Court had denied class certification Wilcox Development Company v. First Interstate Bank of Oregon, N.A. 97 F.R.D.440 (D. Ore. 1983).

Finally leave to file Second Revised Amended Complaint was granted Nov. 1987. CR 78 (App.) However, said amendment was not allowed to contain religious issues, class action Plaintiffs, or unknown defendants. CR 64, 78 (App.)

In December 1987 FIBA was declared insolvent and FDIC was appointed receiver. CR 84. 6 month stay granted FDIC CR 92.

FIBO, FIBC answered Second Revised Amended Complaint CR 81 and filed Motion for Summary Judgment and Motion for Judgment on the Pleadings in March, 1988. CR 85-88. Plaintiff responded 25 April

1988 CR 95-100 with Affidavit CR 96 (App) and referencing all other Affidavits on file CR 96, pg. 3 para 11. Plaintiff moved to strike FIBO and FIBC Affidavits and for continuance CR 98. Both were denied, CR 106 . FIBO and FIBC replied , CR 101-105.

Plaintiff filed Homan Affidavit in September 1988 CR 110 (App). Status conference held September 1988, dates assigned for completion of discovery for Summary Judgment Motion and rebriefing schedule, Order Sept 22, 1988 CR 111 (App)

FIBA answered CR 107 , filed Motion for Summary Judgment and alternatively for Abstention order on November 3, 1988 CR 113, 114. Plaintiff had until December 7, 1988 to respond to Motion for Summary Judgment. CR 115.

Plaintiffs propounded timely first discovery requests on FDIC. Transcript ("TR") at 15. FDIC responded to First Discovery Requests received 8 December 1988. Said responses were insufficient, Tr

at. 15, 16, 18, 19 refusing to answer interrogatories or to undertake any investigation sufficient to allow it to answer said Interrogatories, denying Requests for Admissions on lack of knowledge and refusing to produce Documents other than some Documents relative to the loans in question which it did not provide until December 22, 1988. TR at 16. FDIC never produced the 1982 Second Deed of Trust note which it assured both the Court and Plaintiffs it would do.

Plaintiff awaited receipt of produced Documents to Oppose Summary Judgment Motion and Move to Compel Responses to Admissions, more sufficient Answers to Interrogatories, and to compel production of Documents. TR at 19. Prior to even commencing preparation of such a motion, or obtaining another stipulation for extension of time to Oppose Motion for Summary Judgment, Court Granted FIBA Summary Judgment on 27 December 1988, the second working day after receipt of FIBA

Documents. CR 113 (App.).

Summary Judgment hearing for FIBO and FIBC held April 28 1989, TR at 1 where Plaintiff argued importance of Homan Affidavit, TR at 15 -24, existence of genuine issues of material fact for trial, dilatory tactics of FIBA in refusing to respond to discovery, (TR at 15-16, 18, 19), and fraud upon court of FDIC counsel Gorski falsely advising court Plaintiff had filed a claim with FDIC, (TR at 16).

3. Disposition in Court Below

Summary Judgment on all claims against FIBO and FIBC granted May 15, 1989. CR 118 (App). Final Judgment was granted May 18, 1989. CR 119 (App). Motion to Amend Judgment to include FIBA filed May 26,1989. CR 120. Amended final Judgment granting summary judgment to FIBA on Federal claims only (all that they moved for) and apparantly dismissal without prejudice of action against FIBA on pendant claims granted on June 12,

1989. CR 121 (App). Judgment dismissed all claims against FIBO and FIBC.

b. Proceedings at Appellate Level.

Appeal was timely filed on July 13, 1989. CR 122 (C.A.9 App).

Following the San Francisco earthquake and a ten day telephone extension, Appellant brief was timely filed on 9 November 1990. In December 1990, 9th Circuit granted Appellant a 30 day time extension to file Appellant Brief based on a Motion by Appellees, giving Appellees a 60 day time extension. As a result FIBO withdrew its Motion for Extension of time. This represents one specific example of the judicial slight of hand prevalent in this case.

Appellees briefs elected to restate the "Issues Presented for Review" section deleting Appellant questions for review damaging to their position. FIBO deleted all referernces to Denial of Motions to Amend, RICO claims, Defamation claims, State Antitrust Claims, timliness of

Court's granting of Summary Judgment as to FDIC, denial of due process and/or equal protection, failure to advise pro se litigant of changes in requirements for opposing summary judgment motions, etc.

Reply brief was timely filed pointing out these deletions. Oral argument was scheduled, then cancelled at the last minute. Appellant prepared and filed a Supplemental Addendum to Appellant Brief and Reply Brief, Citation to Supplemental Authorities to Appellant Brief and Reply Brief, Errata to Appellant Brief, Errata to Reply Brief on May 10, 1990 listing over 32 additional authorities dealing with Issues presented for review, particularly RICO, interest rate overcharge cases, and other authority originally planned to be presented at oral argument in Seattle.

On Friday afternoon, May 11, 1990 the case was submitted to Judges Fergusen, Pragerson and Farris in Seattle. Less than

three working days later the Memorandum Opinion affirming the District Court had been drafted, typed, proofed, copied, filed in San Francisco, and mailed on May 16, 1990, well before the Supplemental Authorities filed by mail by Appellant could have been transmitted to, much less read by, the panel members. Not surprisingly, said Memorandum only dealt with some of the issues outlined in FIBO,FIBC Appellees Brief, ignoring the host of Questions Presented for Review, and argued, by Appellant.

Petition for Rehearing was timely filed when due, May 30, 1990 (Appellants birthdate). Financial disclosure reports were requested for judges on panel soon after Memorandum was issued, and a review of the American Bench, 1988-1989 revealed Ferguson to be Catholic, Farris to state himself a Protestant and a former founding Director of two banks, and Pragerson Director of a Jewish Organization. Not until July 10, 1990, just before the July

18,1990 Order denying Petition for Rehearing was filed were disclosure Reports mailed. Said Reports revealed Farris as owner of stock in 5 banks, Pragerson as stockholder in 2 banks including Bankamerica, alleged coconspirator with First Interstate Bank of Oregon in Wilcox v. First National Bank of Oregon, 815 F.2d 522,524 (9th Cir. 1987). Stock "purchased" in 5/7/11, 1989.

Despite the appearance of impropriety of any of the three judges sitting on the panel, no one recused himself. 28. U.S.C. 455(a),(b)(1),(4),(d)(4). In lieu of addressing the procedural railroading, short shifts, finesses, apparant improprieties of the District Court, the Appellant Court merely resorted to more of the same. That is, business as usual.

4. Statement of Facts Relevent to the Issues Presented

Said claims arise from two construction loans CR 1, Ex. 2 page 1 et

seq. to Plaintiff Lane + Knorr + Plunkett Investment Company owned by Plaintiffs Plunkett and Knorr, subsequent calling of one said loan, later boycotting of Plaintiffs by other Alaska banks, and other torts, breach of contract, and wrongful acts by Defendants, their officers, stockholders and agents. Said construction loans interest rates were pegged to the Prime rate of the First National Bank of Oregon, and unlike the notes in Wilcox v. First Interstate Bank of Oregon N.A. 815 F.2d 522 (9th Cir. 1987), hereafter "Wilcox" were defined on the face of the note as the "rate charged by First National Bank of Oregon to its most credit worthy borrowers during the term of the note." CR 1, exh 2 page 1, (App), CR 110 Ex. 1, 2 (App).

The first Construction loan was executed in January 1981, and second in February 1982. The second loan was paid off in 1983, the first note balance was declared in default with back interest of

only about $10,000 due in December, 1983, full payment accelerated at that time ($235,000) and property foreclosed and sold in September, 1984. CR 4 .

It is undisputed during this period FIBA "corresponded" (advanced funds by FIBO to FIBA) with FIBO. It is disputed that FIBO participated in loans with FIBA. CR 110 page 3 (App). Plaintiff's Affidavits provide admissable evidence that FIBA and FIBO did participate in loans where the prime rate was defined as the rate charged by FIBO to its most credit worthy borrowers. CR 110 (App) It is not disputed FIBO made sub prime loans. CR 96 paragraph 16, 17 (App).

On May 17, 1982 Plaintiff agent learned that FIBA officer had defamed Plaintiff Lane + Knorr + Plunkett Architects and Planners by stating to a Rogers and Babler officer that LKP Architects was almost bankrupt. CR 96, para. 13 (App). Said statement was

made in the context of a veiled bribe offer to LKP agent Ben Garland. CR 80, page 23.

In January, 1984 FIBA called an accounts receivable loan to LKP Architects, and illegally removed funds from Michael Plunkett Inc. account, CR 1,80 page 12 (not a guarantor of said loan). It further called a furniture loan despite the fact said loan was virtually current (said loan was later reinstated), and in the process falsified the notary on a UCC guarantee, CR 96, para 15 (App) which assigned to FIBA security for real estate loans .

In February 1983 Marge Redbird, bookkeeper for LKP telephoned FIBO twice to ascertain FIBO prime rate for each month of the construction loan. CR 96,para 4 (App) Exhibit 4, to CR 80 .

Each month, through default in December 1983, FIBA would mail loan statements to LKP on which the loan rate was typed on the face of the statement. CR

96, para 4 (App) Exhibit 5 to CR 80 .

The Deed of Trust Note which defined the Prime Rate was standard FIBA , CR 110, page 1-4 (App) prepared for many loans so that participation with FIBO could be effectuated on a loan by loan basis. CR 110, page 1-4 (App).

Despite the fact FIBA officers knew Wilcox had been filed, CR 110, page 3-4 (App) no attempt to renegotiate the Deed of Trust Note terms, or rebate interest overcharges as a result of sub prime rate loans was ever effectuated with plaintiffs. TR p.23. FIBA counsel Kurtz claimed some 15 borrowers had brought the Wilcox case to his attention, CR 37 page 4, (App), all of whom were denied any relief. Revised Second Amended Complaint, CR 80 para. 10.

Alaska Bank of Commerce became a franchisee to FIBC in 1983. FIBC sent employees to Alaska to supervise FIBA branch bank design plans. CR 96, para 18.

Robert McWhorter became FIBA commercial loan officer in 1983. Commercial Loan Officer Kauffman proposed a SBA loan strategy in early 1983 whereby a revolving line of credit would replace an accounts receivable loan to LKP Architects. After LKP was terminated by the Anchorage School District on March 31, 1983, at the suggestion of agent for Rogers and Babler. At the time Don Mellish, Chairman of the Board of National Bank of Alaska was a director of Rogers and Babler's parent MAPCO Inc. McWhorter met with Plunkett and categorically denied any further loans to Plaintiff, contrary to Kauffman's earlier proposals. CR 96 para 9, (App).

McWhorter had been fired from FIBO in 1982. CR 101, CR 102. Plaintiff included fact that McWhorter was a plant, looking out for the interests of FIBO. CR 96, para 9 (App) page 3, prior to Reply by FIBO.

Kauffman defamed LKP Architects by relating to former LKP employee that LKP was insolvent and about to close its

doors. Complaint CR 1 page 10, verified by CR 4 para 2. CR 80, para 22, 32, 69.

Prior to foreclosure sale of September, 1984 Plaintiff approached every bank in Anchorage in an attempt to refinance two unsold condominium units which secured January 1981 Deed of Trust Note, CR 96 para 13 (App). Each bank denied credit, some stringing Plaintiffs along, one stating categorically that so long as the lawsuit against LKP existed by Anchorage School District (filed in June 1983) no loan was possible, CR 96 para 13 (App). Virtually all said banks which expressed interest in loans and who had requested financial statements etc. had communicated with FIBA prior to denial of credit. CR 96, para 13 (App). Revised Second Amended Complaint, CR 80 pages 11-12, 24.

One National Bank of Alaska loan officer, Seiberts, Roman Catholic, signalled loan officer Struts, by

implication Catholic, when I asked Seibert for loan, and he routed me to Struts, who then denied loan, stating lawsuit with Anchorage School District and Rogers and Babler as reason. CR 96 para 13 (App).

Rule 14.1 (i) Basis for Federal Jurisdiction in the First Instance:

28 U.S.C. 1331, (Federal Question; 28 U.S.C. 1332 (Diversity Action); 28 U.S.C. 1337 (Antitrust controversy jurisdiction); 15 U.S.C. 1 et seq. (Antitrust Action), 18 U.S.C.1961- 1968 et seq. (RICO), 28 U.S.C. 1292 et seq., 28 U.S.C. 2201-2202, Declaratory Judgments and other remedies; 28 U.S.C. 1441 (c), Actions Removable; pendant and ancillary jurisdiction: See United Mineworkers v. Gibbs, 383 U.S 715, 16 L.Ed 2d 218,229, 86 S. Ct. 1130 .

Rule 14.1 (i) Argument (Reasons)

The constitutional equal protection and due process issues raised in this case hinge on the Court's treatment of non prisoner pro se litigants and/or non Christian, non-clerically controlled

litigants,. As a result of the Anderson v. Liberty Lobby Inc. ("Anderson") 477 U.S. 242, 106 S.Ct. 2505, 2511, 91 L.Ed 2d 202 (1986), Celotex Corp. v Catrett ("Celotex"), 477 U.S. 317, 106 S.Ct. 2548, 2552-53, 91 L.Ed 2d 265 (1986) and Matsushita Elec. Indus. Co. v. Zenith Radio Corp., ("Matsushita")475 U.S. 574, 106 S.Ct.1348,1356, 89 L.Ed 2d 538 (1986) decisions of this court, the 9th Circuit ruled in California Architectural Products Inc. v. Franciscan Ceramics, Inc., 818 F.2d 1466,1468 (9th Cir. 1987) case that "no longer can it be argued that any disagreement about a material issue of fact precludes summary judgment". Although Plaintiff claims a prima facie case was made sufficient to preclude summary judgment on all claims, the District and Appellate Court decided otherwise based almost exclusively on the Celotex and California decisions allowing summary judgment where "a complete failure of

proof concerning an essential element of the nonmoving party's case renders all other facts immaterial." Celotex, 477 U.S. 324, 91 U.S.324, 91 L.Ed 2d 274.

As the instant case had been filed before Anderson, Celotex or California, pro se litigant deserved at least notice of the policy change in requirements necessary to resist summary judgment, particularly as to summary judgment as to pendant and ancillary claims since Alaska rejected the prima facie case requirement of Celotex in Moffatt v Brown, 751 P.2d 939 (Ak. 1988).

This issue has enormous significance on national fronts. Entire non prisoner pro per population is being effected in different ways by at least three circuits and various States by being denied amendments to Rules to identify the effects of Celotex etc. Thousands of defrauded borrowers are being denied restitution by First Interstate group of bank, and banks throughout the United

States by Courts' consistent and repeated refusal to entertain RICO, class action, Antitrust and/or pendant jurisdiction claims.

1. CONFLICT BETWEEN COURTS OF APPEALS: Can the 9th and 6th Circuits continue to hold non prisoner pro se litigant is not entitled to detailed requirements (i.e necessity of making a prima facie case to avoid summary judgment) while 10th circuit holds the opposite?

A. Issue

Despite including this issue in "Questions for Review" in Appellant Brief, and in Petition for Rehearing and Suggestion for Rehearing En Banc, Court of Appeals failed to address this conflict between its decision in Jacobson v. Filler, 790 F.2d 1362, 1363-1367 (9th Cir. 1986) and Jaxon v. Circle K Corp., 773 F.2d 1138, 1140 (10th Cir. 1985). Brock v. Hendershott, 849 F.2d 339, 343, (6th Cir.

1988) and Bauman v. Stae Div. of Family and Youth Services, 768 P.2d 1097, 1099 having adopted Jacobson, despite Judge Rabinowitz's strong dissent in Bauman, 768 P.2d at 1102 citing An extension of the Right of Access: the Pro Se Litigant's Right to Notification of the Requirements of Summary Judgment Rule, 55 Fordham L. rev. 1109 (1987) by Joseph M. McLaughlin.

In the former case, the 9th Circuit held summary judgment was appropriate because the non-prisoner pre se litigant, by existence of local Arizona District Court Rules requiring a tabular list of facts in support of summary judgment, had been apprised of substantive evidentiary requirements not included in Fed Rule Civ. Procedure 56 (e). It further held that the Court was under no obligation to advise a pro se litigant any more than a practicing attorney and to advise a non prisoner pro se litigant of any substantive requirements should be accomplished by formal rule amendment rather than

peicemeal adjudication. 790 F.2d at 1366.

Quite the contrary however is Circle K, where the court held that non prisoner pro se litigants were entitled to ". . .proper notice regarding the complex procedural issues involved in summary judgment proceedings, citing an earlier 9th Circuit Case Garaux v. Pulley, 739 F.2d 437,439 (9th Cir. 1984). Even the 9th Circuit has admitted that "This Court has consistently held that courts should liberally construe the pleadings and efforts of pro se litigants, particularly where highly technical requirements are involved." U.S. v. Ten Thousand Dollars in U.S. Currency, (emphasis added), 860 F.2d 1511,1513 (9th Cir. 1988). also citing Garaux at 439.

B. Argument This conflict issue is the crux of Plaintiff's case. Had plaintiff been advised of the new (since time of filing case in September, 1984) substantive requirements of California

Architectural Building Products Inc. v.Franciscan Ceramics Inc. 818 F.2d 1466,1468 (9th Cir. 1987) requiring a prima facie case, the District Court would have denied summary judgment, or the Appellate Court would have no grounds on which to state "he (Appellant) does not begin to approach the level of proof of unlawful concerted activity required for his antitrust claim, as the district court noted." and the "factual paucity of appellant's case". 9th Cir. Memorandum ("Memo") at 5.(App). In Circle K the 10th Circuit ruled the District Court abused its discretion in failing to advise Plaintiff of requirements and allowing a continuance to meet those requirements, including an opportunity to verify his complaint (an action already accomplished by Plaintiffs in the instant case.

Thus, this issue met the 9th circuit criteriafor Rehearing en banc of an opinion of another circuit court of appeals directly in conflict which

substantially affects a rule of national application and an overriding need of national uniformity. (9th Cir. Rule 35-1). Further, since Circle K relied on prisoner pro se cases, Garaux v. Pulley, Barker v. Norman, 651 F.2d 1107, 1128-1129 (5th Cir. 1981), Lewis v. Faulkner, 689 F.2d 100 (7th Cir. 1982), Roseburo v. Garrison, 528 F.2d 309,310 (4th Cir. 1975, and Hudson v. Hardy, 412 F.2d 1091, 1094-1095 (D.C. Cir. 1986), what must be reviewed by this Court in the first instance is whether the 9th circuit errored in assuming a non prisoner pro se litigant is to be treated any different than a prisoner pro se litigant (since this court has firmly held in Haines v. Kerner, 404 U.S. 519,520, 92 S.Ct 594,595, 30 L.Ed 2d 652 (1976), Estelle v. Gamble , 429 U.S.97, (1976), Hughes v. Rowe, 449 U.S.5,9, 101 S.Ct. 173,175, 66 L.Ed 2d 163 (1980), Boag v. MacDougall, 454 U.S. 364,365, 102 S.Ct. 700,701, 70 L.Ed2d 551

(1982) that pleadings of pro se litigants are to be held to a lower standard than those of a practicing lawyer, without regard to whether said pro se litigant was a prisoner.)

This conflict clearly needs settling by this court, what with the enormous increase in litigation costs (even without attorneys), enormous attorney fees, and increased complexity of the Rules and cases interpreting them.

Treating pro se litigants in different parts of the country is an "intolerable conflict" (A practical Guide to Certiorari, S. Baker, 33 Cath. U. L.Rev. 611-619 (1984)) flying in the face of due process and "equal" protection clauses of the 14th Amendment. Such a conflict is both real in the application of law, and a conflict in the underlying principles, both which require resolution here. Such square and irreconcilable conflicts have been granted certiorari in McElroy v. United States, 455 U.S. 642,643

(1982), Firestone Tire and Rubber Co. v. Risjord, 449 U.S. 368,373 (1981). The issue in conflict is important and recurring and a uniform rule on the point is needed. Commissioner v. Bilderp.369 U.S. 499,501 (1962). Even if the conflict were to be only apparant, this court has granted certiorari in Barrett v. United States, 423 U.S. 212,215 (1976) and Stencel Aero Engineering Corp. v. United States, 431 U.S. 666,669, n. 6 (1977).

As the issue is one divided among circuits and not heretofore decided, it meets the criteria for certiorari of Lehman v. Lycoming County Children's Services, 458 U.S. 502,507 (1982). As the conflict is extremely relevent to the resolution of the case it meets the test for certiorari of Sommerville v. United States, 376 U.S. 909 (1964).

2. Can Appellate Court Ignore Questions Presented for Review in Affirming Disrict Court Action?

A. Issues

The following questions presented for review at the Appellate level were ignored in the Affirmation.

1. "Whether the Court errored in denying Motions for Leave to Amend Complaint to reinclude class allegations, to included religious issues, and to reinclude unknown defendants, and to include conspircy in restraint of trade (boycott) issues adding Anchorage School District as other defendants."

"3. Whether the entire process before the court constitutes denial of due process and/or equal protection to a pro per or other litigant, and/or bias by the court."

"4. Whether the Court errored in granting summary judgment to defendants on RICO claims." (Appellate Court and District Court falsely concluded that all Plaiantiffs' claims were based on the allegations of a conspiracy).

5. Whether Court in fact granted

summary judgment to FDIC on the merits in the pendant and ancillary claims. The trial record clearly indicates, as does FRCP 41(b) that dismissals on jurisdictional grounds (such as pendant claims) are without prejudice. What the District Court failed to clarify in the Judgment, and what the Appellate Court was asked to clarify in the Appeal (due to the Alaska Superior Court's granting of summary judgment on claims it held were the same on res judicata grounds), that in fact these pendant claims were dismissed as to all Defendants without prejudice.

7. Whether the Court acted unreasonably in granting summary judgment to FDIC prior to opposition by Plaintiff?

8. Whether the court errored in failing to give notice to Pro Per Plaintiff of substantive evidentiary changes required in opposing Motions for Summary Judgment.

Clearly equal protection and due

process were denied by Court's failure to address these issues, even with one sentence to the effect the above questions were frivolous (which obviously they were not). Obviously the Memrandum by Appellate Court merely parroted the Appellee Brief (or was surrepticiously drafted by Appellee at request of Court, a common practice in Alaska, and perhaps everywhere).

Reasons for Granting Review

Even if grounds existed to uphold the District Court on a factual basis , which is vigorously denied, the above points on appeal deserved review on a procedural basis. To deny said review, no matter how brief, was to deny due process and equal protection. . The hasty and erroneous Memorandum is clear proof of the Appellate Court disinterest in the case and/or inattention to its newly Statuatorily mandated charge as the Court of last resort as a matter of right. 28 U.S.C. 1254(1). What could be "bumped

upstairs" as a matter of right by an appellant in a Federal case is no longer possible. The discretionary review now limiting Appellate Court decisions by this Court completely changes the obligations of the Appellate Courts, an obligation obviously shirked in the instant Appeal. Such irresponsibility clearly calls for the supervision of this Court, as such blatant irresponsibility is, or should be so far outside the usual course of proceedings as to warrant review.

The importance of the issue is that it effects the attitudde of all the Circuit Courts now that Appeal as a matter of right has been denied in a civil case. Its importance as a matter of first impression resolvable by this Court only of the Circuit Court's interpretation and application of due process is enormous as is the import of a District Court's ability to dismiss a pendant and ancillary claim with prejudice.

3. Can the Appellate Court Ignore Appeal of Denial of Motions to Amend Complaint in Affirming Summary Judgment?

Assuming, arguendo, that the Appellate Court was not denying procedural due process in failing to even address this issue, the question remains whether Affirming the District Court's various denials of Motions to Amend was so improper as to warrant this Court's review on the merits. Central to this question is the Appellate Court's false statement that " all of his claims, both state and federal, are based on an allegation of conspiracy" (Memo, page 4.)(App). Not so. Petition for Rehearing (App). Page 2 CR 1, CR 80. Even assuming all claims were in fact based on the claims of a conspiracy, plaintiff's denial of such an outrageous claim should in itself have been grounds for leave to amend to allow pro se Plaintiff an opportunity to replead to alleviate any construction of the complaint which hinged all other claims on

a conspiracy. This was not done.

B. Resons for Granting Certiorari

Appellate Court's affirmation so far steps outside the usual course of conduct of proceedings as to demand its review and supervision. Basically, leave to amend must be freely granted. Pleadings may be struck only when frivolous etc. Denial of Motions to Amend can only be made where prejudice will accrue to opposing party, such as closeness to trial etc. Motion for leave to amend to bring in Anchorage School District as coconspirator and separately (pendant claims) was filed in 1985. Motions to amend to include religious issues, denial of first amendment rights was properly plead, was not prejudicial, but was denied on grounds of relevance and lack of "showing to the contrary" CR 78 page 2.(App).(Court claimed it had "heretofore ruled" irrelevance, but no such order exists. See CR64. Proof is for discovery, not

pleading. The Catholic Court was clearly well out of bounds for denying said claims on evidentiary and relevance grounds.

As to the class claims, the Court again finessed Plaintiff by denying class allegations in the motion to amend, even though they existed in the original complaint. No Court order existed which set a date to Move to Certify the Class Action, so leave to amend was grossly denied by striking class allegations, in effect a denial of class action certification without briefing.

Similarly with unknown defendants, it was improper to strike this claim. Defendants can be added after trial, when for instance defedants identities become known at, or after trial. With religious issues particularily, various third orders and other groups responsible for the various aspects of the rate fixing intrigue could be discovered at any time. A new trial or separated trial might be mandated, but not to arbitararily strike

the properly formed pleading.

Taken together the above actions clearly demonstrate extreme prejdice against Plaintiff either because he is not a bank, is not an attorney, of is not a member of a Judeo Christian religious society and therefore is not subject to the control of some other entity. Regardless, supervision by this Court and granting of Certiorari is obviously mandated by such flagrant injustices.

Said actions constitute a conflict with this Court's many interpretations of the FRCP and therefore precedence set against a pro se litigant by the cavalier action of the prejudiced court is enormous and must be checked by this court's supervisory role.

4. Can District Court and Appellate Court Ignore Verified Pleadings and Affidavits on File in Granting Summary Judgment?

Again assuming, arguendo, that

Appellate Court was procedurally proper in not addressing the issues of verified pleadings and other Affidavits on file, the issue remains as to whether the Appellate Court and District Court errored substantively in ignoring said documents. The validity of verified complaints to resist summary judgment is well settled in Appellate Courts. Jaxon v. Circle K Corp., 773 F.2d 1138, 1140 (10 Cir. 1985).

This Court has not addressed the issue, nor has it addressed the issue of an Appellate Court's refusal to review the entire file which included such documents as well as other Affidavits.

Once Plaintiff was denied a trial through summary judgment, Appeal on the merits, given the Court's insistence a pro se plaintiff must meet the California criteria despite no warning of the need to do so since California was decided well after this case was filed. The Court had an obligation to review the entire file pursuant to Rule 56 . It did not do so.

The Appellate Court, reviewing De Novo also had an obligation to do so. It did not do so. This is reversible error an egregious departure from the usual proceeding as to warrant Court review.

the importance of this issue to pro se litigants of all types is immense, who lack the resources to retain counsel to research summary judgment, but have the ability to verify a complaint. To allow a Circuit Court to sanctify ignoring of the entire record is denial of due process and flagrant violation of the many decisions of this Court regarding application of summary judgment rules.

5. Did the Court Error in Granting Summary Judgment to FDIC ?

Assuming Court was procedurally proper in failing to address this issue on Appeal (which is vigorously denied), the issue of the proper procedure by District Court warrants review and supervision as does Appellate Court's sanction of such

actions. Even without an Opposition, Court was obligated to review the entire file before granting summary judgment, particularly with respest to a pro se litigant. This it did not do. It also should have waited until the hearing before granting summary judgment. It granted summary judgment merely because Plaintiff did not oppose the Motion with a separate memorandum, even though the Opposition to the Motion by FIBC/FIBO was fully briefed at that time, and included case law and argument as applicable to FIBA as other defendants. Affidavits and verified complaints were on file. FDIC had refused to properly respond to discovery etc. In short the granting of summary judgment over the Holidays in 1988 was a railroading operation, a travesty of due process and equal protection demanding this Court's review and supervision, particularly in view of the several months the Court would take to make a decision after previos motions were fully ripe.

6. Can Appellate Court Judges Memorandum Go Unreviewed Despite Appearance of Impropriety and Otherwise Inability to Exercise Independant Judgment?

As described above, the Appellate panel consisted of two judges with substantial bank stock interest and holdings. The third judge is admitted Roman Catholic with so few listed assets as (not even a personal residence) as to very likely be a mendicant or monastic lay brother, cleric, tertiary or some other special relationship with Christianity that requires vows or solemn promises of poverty and/or obedience. Despite the one and despite the six different bank stock holdings, and former board member of two banks of the third judge (said stocks are valued at between $47,000 and $160,000), no judge attempted to recuse himself.

Next, the hastily prepared, factually inaccurate, Memorandum, the circumstances

surrounding the extension of time to file the Appellee's brief, and the cancellation of the Oral Argument after same had been set, etc, intentional delay in forwarding the Disclosure Statements, all point to bias, impropriety, and fundamental denial of due process and equal protection sufficient to warrant this Court's supervision. It also brings up the possibility the panel was not randomly selected per 9th Cir. Note to Rule 34-1to31-4. Regardless of whether the bias is because of the bank holdings of judges, and/or clericalism of one or all of the judges does not matter. The improprietry on its face is sufficient to warrant review.

The importance to all pro se litigants is obvious. They are treated as second class advocates by judiciary and clerks. If this case is allowed to stand, the judicial basis for expanding this treatment to other Courts and cases, and issues will continue. For instance, as a

sequel to Jacobson, the 9th Circuit held that requiring a pro se litigant to presubmit all examination of witnesses in advanceof trial to opposing counsel was not a depriviation of due process! Miller v. Los Angeles County Board of Education, 799 F.2d 486, 489 (9th Cir. 1986). This prejudicial treatment of pro se litigants must be checked. Said treatment is in direct violation of this Court's rulings that pro se litigants efforts and pleadings are to be held to a lesser standard. In fact pro se litigants are being held to a much higher standard.

6. Can the Court Ignore Religious Issues in Affirming Lower Court.

As discussed above, the lower Court denied leave to Amend as to religious issues mistakenly claiming the issues had been ruled irrelevent and claiming no proof had been offered. That a Roman Catholic Judge would protect another Roman Catholic, or more pointedly, the Roman

Cathollic Church itself, from the embarassment of a lawsuit in which clericalism is a named issue (even though the church and the Roman Catholic bank owner Albert Swalling were not named Defendants) is evidence in itself of judicial impropriety in favor of the church, calling for this Court's supervision. Said radical denial of due process is further proof that in fact the banks' rate fixing and discounting program was clerically inspired.

The importance of this First Amendment issue is enormous, as CR 52, alleges separate and collusive action to deny plaintiff's religious liberty. For the church to use the Courts to induce religious conversion through harassment, financial burden, etc. is an enormous abuse of process. The far reaching effects of allowing a District Court to arbirarily strike or deny amendments based on relevance, as opposed to relating back, or other standards calls for Court

Supervision. Said act so conflicts with Kinnear Weed Corp v. Humble Oil & Ref. Co., 214 F.2d 891 (C.A. 5th 1954, cert den. 384 U.S. 912, 75 S.Ct. 292, 99L.Ed 715 (1955) (Pleadings or portions therof cannot be struck where their presence in the pleading cannot prejudice the adverse party.) as to demand review.

7. Whether the Appellate Court's Sanctioning of the District Court's Granting of Summary Judgment on Antitrust and RICO Claims So Far Departed from Accepted and Usual Proceedings as to Call for this Court's Power of Supervision?

Assuming, but not conceding, that the Federal Rules and the Court were sufficient procedural and/or substantive notice of the changed requirement that to resist summary judgment evidence supporting every essential element of a claim must be proferred, the Federal claims were substantiated by the record sufficient to resist summary judgment on

the merits..

A. Antitrust Claims.

Despite having demonstrated that a prima facie case or a genuine issue of material fact as to each of the essential elements of both the per se and rule of reason standards had been made, the Appellate Court ignored these facts, basing its Opinion on the misstated argument of Appellee FIBO/FIBC, ignoring the various Affidavits on file, the statements and facts in Wilcox, and the facts stated in the verified complaint and verified proposed amended complaint. See Petition for Rehearing(App) for outline of errors.

B. RICO

The Appellate Court briefly discussed the RICO claims in its statement of the case, but completely ignored the RICO issue altogether in its discussion of substantive law and conclusions, claiming no business relationship existed between FIBC and FIBO, thereby stating a

contractual arrangement has to exist for RICO and other wrongs to be actionable (a novel decision). Plaintiff developed a business relationship with FIBO in making two telephone inquiries to FIBO. Restatement(Second) of Torts, Sec. 531-533 recognizes misrepresentations need not be made directly to an injured party. FIBC asgent had business relationship with plaintiffs in design review of branch banks. Courts ignored genuine issues raised by calling FIBO, FIBC affidavits credibility into questions by these facts along with the correspondance and participation relationships denied by FIBO and FIBC.

This court has repeatedly overturned Appellate Court decisions which have arbitrarily attempted to limit RICO applications. Another question for review, not raised by any party below, but raised by the Appellate Court is whether a business relationship must exist to

trigger RICO. If so, Plaintiff was also intended third party "beneficiary" of the participation agreement between FIBO and FIBA since standard Loan Document pegging the loan rate to FIBO's prime rate was set up so a loan could be participated by FIBO.CR 110, (App).

Again, court errors in review of RICO claim are found in Petition for Rehearing. (App). See also Civil RICO and Interest Rate Regulation, by William Burke, The Business Lawyer, Vol 39, May 1984, 1252-1261, 41 Washington Financial Reporter , Dec. 19,1983, page 933,for discussion of enormity of claims facing FIBO,FIBC in class actions.

C. Reasons for Granting Certiorari

The Court has granted Certiorari on factual matters where case acquires importance for some other reason. Mobil Oil Co. v. FPC, 417 U.S. 283,292 (1974). See Stern & Gressman, Supreme Court Practice , 6th ed. 1986, Sec.4.14, and where a small claim is sought but due

process questions are substantial. Thompson v. City of Louisville, 362 U.S. 199, 203 (1960). This Court has granted review of the application of constitutional principles to slightly different but frequently occurring factual situations. Michigan v. Long, 463 U.S. 1032 (1983).

8. Whether in Light of the National Savings and Loan and Banking Crisis, Various District Court and Appellate Courts Have Decided Important Questions of Antitrust and RICO, Equal Protection and Due Process Which, Given the Instant Case Should be Settled by this Court (Rule 10.4)?

As Stated in the Supplemental Authorities, some thirty district and Appellate Cases known to date have been reduced to Published Opinion. Only two, NCNB National Bank of North Carolina v. Tiller, 814 F.2d 931 (4th Cir. 1987) Appeal in forma pauperis denied, 484

U.S.974, 98 L.ed. 2d 481, 108 S.C.483, (1987). has reached this Court.,(American National Bank and Trust Company of Chicago v. Haroco, 473 U.S. 606, 87 L.Ed 2d 437, 105 S.Ct. 3291 held mail fraud sufficient to raise RICO claim). That some of the nation's largest banks would participate in various schemes to defraud borrowers by discounting below the published prime rate, when said rate was either the established rate or actually was defined on the face of the note as the rate offered the bank's most credit worthy borrowers, and that said action has gone unpunished by the courts is appalling. Every Court has used every technicality to reduce any such claims to "breach of contract" or misrepresentation claims, thus removing them from the Federal Courts. These published opinions involve over 15 banks, 9 District Courts, and 5 Appellate Courts. Despite the fact many large settlements have been accomplished on the RICO claims alone , few claims have

been allowed to go to trial, and like Wilcox, even with a jury Verdict against FIBO, the Court overturned same and Appellate Court affirmed, but reversed the granting of summary judgment on RICO.

Given this history, it is time this Court settle the issues, and mandate the judicial proceedings for the thousands of defrauded borrowers nationwide victimized by these banks.

10. Whether the Appellate Court So Departed From Accepted and Usual Course of Judicial Proceedings in Affirming Lower Court's Granting of Summary Judgment on Pendant and Ancillary Claims As To Call for Exercise of this Court's Supervision?

Memo at 5 states District Court has every right to dismiss pendant and ancillary claims. Plaintiff/Appellate/ Petitioner agrees the District Court has the right to dismiss pendant and ancillary claims for refiling in state court, not to dismiss same on the merits. Memo cited

Alaska case Shultz v. Sundberg , 759F.2d 714 ,718(9th Cir. 1985) which cited Jones v. Community Redevelopment Agency , 733 F.2d 646,651 (9th Cir. 1984). Both held pendant claims to be dismissable but were silent as to dismissal with prejudice. Fed. Rule of Civil Procedure 41 (b) clearly states that dismisals for lack of jurisdiction, or improper venue do not operate as an adjudication on the merits.,(APP. FRCP 41(c). justices Farris and Ferguson both participated in Schultz.

With such a clearcut a Rule and Memo by the court Plaintiff would be first to state Appeal of this issue as frivolous. Unfortunately, however this Court's supervision is needed because the Alaska Superior Court at the extreme prompting of a Federal Agency, FDIC, has Adjudged that the dismissal of pendant and ancillary claims against the parties has been on the merits, and therefore granted summary judgment against Plaintiffs in Civil Case 3AN-87-9269 in State Court on res

judicatsa grounds. Said case therefore required yet another appeal, now pending before the Alaska Supreme Court. A motion for stay in those proceedings by Petitioner in this case pending outcome of this petition was denied. Said Appellant brief is due about November 22, 1990, well before this Petition will have been ripe, one more example of the judicial whipsawing used to deny due process, by conflicting one jurisdictional So by whipsaw, finess, deceit, overt omission, the Courts are equally able to deny protection of the laws to whomever it chooses.

Court affirmed that it had in fact dismissed pendant claims <u>without</u> prejudice. The next stunt was the Amended Judgment wherein FDIC counsel propose language which stated " This Court having granted motions for summary judgment in favor of the defendants.

IT IS HEREBY ORDERED AND ADJUDGED

that plaintiffs' cpomplaint against defendants First Interstate Bank of Oregon, First Interstate Bancorp, and FDIC, receivor of First Interstate Bank of Alaska, is hereby dismissed." Compare this with the transcript at 13-14:

MR. REYNOLDS: (FDIC Counsel) Your Honon, only insofar as FDIC, as receiver for First Interstate bank, had moved for summary judgment based upon the federal law claims of the Sherman Act and the RICO claims. and I just wanted to make a statement or inquiry about those to the court.

On December 27th, the Court granted FDIC receiver's motion for summary judgment. And in regard to the federal law claims, and dismissed the case as to the state law claims. . . So if the Court has granted our summary judgment motions, then there's not really anything for me to argue on behalf of FDIC. . .

THE COURT: Well, I thought I had granted it, but now you're raising

questions in my mind."

So a principal issue in need of supervision in this case is whether the Court did in fact dismiss as adjudication on the merits, the pendant and ancillary claims. Since the FDIC and Alaska Court system have taken the position said claims were dismissed with prejudice, Petitioner must take the same view and demand this court supervise the lower court's obvious overstepping of their authority under United Mineworkers v. Gibbs, and reverse the Judgment as to Pendant and ancillary claims against, FDIC, FIBC, FIBO so they may be filed in state court.

11. Alternatively, If District Court's Granting of Summary Judgment on Ancillary Claims Was Procedurally Proper, Was Appellate Court's Affirmation of Said Action such a Departure from Accepted and Usual Course of Judicial Proceedings in Affirming Lower Court's to Call for Exercise of this Court's Power of

Supervision?

As argued above, this court must supervise the lower courts on this issue. Appellee's contention that all claims hinged on establishment of a conspiracy was pure bunk. Pleadings clearly made individual claims. Affdidavits, verified complaints provided admissable evidence of said separate claims. FIBO/FIBC did not even "point out" no genuine issues of material fact existed as to several of such claims, like violations of Alaska Consumer Protection Statute, AS 45.50.471 et seq., yet the Court granted summary judgment on this issue, and the Appellate Court affirmed. Similarly, a defamation claim was properly plead against FDIC. Affidvit was submitted (CR 96), (AP). offering proof of same. FDIC did not even "point out " no genuine issue existed on this issue, yet District Court granted summary judgment on this claim and Appellate court affirmed. Clearly supervision is necessary. Wide

implicatsion exists as this is the rule rather than the exception with Plaintiffs who have pressed claims against banks on these 30 or more rate discounting claims.

It is in the national interst that the District Courts pay attention to thier responsibilities and not be led down the path by unscrupulous attorneys, particularly when the adversary is appearing pro se. For the Appellate Court to concentrate on a decision forone group of parties, and "slide one by " for another is basis denial of equal protection and due process, which this court is obligated to resolve.

12.Whether the Appellate Court's Affirmation of District Court's Granting of Summary Judgment to Defendant Federal Insurance Corporation Prior to Opposition by Plaintiff Was a Denial of Equal Protection and Due Process and/or So Far Departed From the Accepted and Usual Course of Judicial Proceedings as to Call

for an Exercise of this Court's Power of Supervision?

Railroading as an issue was brought up below, Appellant Brief at 45. Said conduct is therefore not unique to this case. See Pocahontas Supreme Coal Co. v. Bethlehem Steel, 828 F.2d 211, 214-217 (4th Cir. 1987) It is conduct which is a national phenomenon particularly in these interest fraud cases. Although Tiller was not a railroaded case, it certainly was swept out the back door of the 5th circuit. The instant case method of sweeping the case out the door was to whipsaw the Plaintiff by allowing the Defendant to delay production, then provide inadequate, useless production, then grant summary judgment over the Christmas Holidays , before pro se Plaintiff can move to compel, for more time or other wise oppose. Despite this, Plaintiff's opposition to FIBO/FIBC Motion for Summary Judgment, already ripe contained more than sufficient Opposition,

evidence, argument to preclude summary judgment against FDIC, yet the Court did not even look at said evidence, or the verified complaint, or verified amended complain or affidavits.

13. Whether Appellate Court's Affirmation of Judgment, and Failure to Address Questions for Review by Plaintiff of Lack of Notice to Pro Se Plaintiff of Substantive Evidentiary Changes Necesary to Oppose Motions for Summary Judgment Was Sufficient Departure from the Accepted and Usual Course of Judicial Proceedings as to warrant Exercise of this Court's Power of Supervision?

This question is the heart of this Petition. By failing to even address many issues, and failing to rule on whether sufficient evidence existed to raise a genuine issue for trial on the RICO claims, the Appellate Court has grossly abused its jurisdictional powers, all to the benefit of the Defendants.

Assuming, but not conceding, the trial and Appellate Courts were correct that insufficient evidence was proferred to resist summary judgment on Federal and/or state Claims, the reason for this was the change in midcase as a result of the Celotex, Anderson and Matsushida cases as interpreted by the 9th Circuit in California. By requiring a prima facie standard in lieu of a genuine issue standard without notifying pro se plaintiff of this changed requirement left plaintiff believing his Affidavits and exhibits thereto and Affidavit of Homan were sufficient to raise a genuine issue of material fact for trial on each of the claims for which FIBO/FIBC and FDIC sought summary judgment.

It is no wonder plaintiff was quite surprised when the Court, having allowed additional discovery time for the express purpose of resisting summary judgment but not saying such discovery was required, or why additional evidence was neceessary,

granted summary judgment to FDIC prior to filing opposition or results of discovery (nothing of substance), and having a hearing and still not advising of the lack of evidence as to FIBO/FIBC and then for the first time while granting summary judgment to FIBO/FIBC announcing Plaintiff had failed to meet the evidentiary standard established by California, a case decided 3 years after the instant case was filed!

At the Appellate level a District Court case was submitted to demonstrate a Court who gave a licensed attorney an opportunity to rebrief opposition to summary judgment to demonstrate an element of fairness in treating cases in the pipe. Smart v. Mid-Continent Imports, Inc., No. 85-2273 (D.C. Kan. 1986).

On Appeal, Plaintiff argued the verified complaint and proposed amended complaint provided additional evidence to resist summary judgment. This evidece was

ignored by the Trial and Appellate Court.

Had plaintiff known at the conference in September that a prima facie case per Rule 50 would have to be made some, additional discovery could have been made (Plaintiff had to seek employment and relocate to California during this period) and Motions to Compel Discovery issued to provide evidence to support or raise a genuine issue for trial on every element of every cause of action against every party. A pro se litigant cannot be expected to read every relevant Supreme or Appellate Court case as it comes out.

This issue is of nationwide import as it effects all non-prisoner pro se litigants, a group not expressly addressed by this Court. Even the Supreme Court Rules give extreme latitude to prisoner or in forma pauporis pro se litigants, but to the pro se litigant who makes one dollar a year over the indigency limit, staggering requirements suddenly take over. The special printing requirements for the

appendix are an example. To meet the format, virtually all Appellate Appendix items have to be reformatted which requires retyping of all typed documents, different binding requirements etc.

Not only is Jacobsen inconsistent with Jaxon v. Circle K but is inconsistent with another 9th Circuit Opinion in Wilborn v. Escalderon, 789 F.2d 1323,1332, (9th Cir. 1986) whrein the same Court stated it was permissable to advise a non prisoner pro se litigant of the need to amend to add an indispensible party! Conflicts within a circuit are grounds to grant certiorari when conflicts between circuits on the issue also exist, particularly since Suggestion for Rehearing en banc was denied. Scarborough v. United States, 431 U.S. 563,567n.4(1977). Intracircuit conflict and importance of the question are also grounds for certiorari. John Hancock Ins. Co. v. Bartels, 308 U.S. 180,181 (1939).

What must also be settled by this Court on a more general level is whether California is a proper interpretation of Celotex, Anderson and Matsushida, since California stated the decisions were a change (" no longer can",) as opposed to an interpretation of existing law.

The next important question to be determined is whether(assuming arguendo California is a proper expansion of Celotex et al) rule 56 as written is sufficient notice to a non prisoner pro se litigant of the substantive prima facie case requirements needed to resist summary judgment. It is Petitioner's position that no reasonable person can interpret Rule 56 as requiring a party to prove every essential element of every claim of one's case to resist summary judgment where the burden of moving party is merely to "point out" without any evidence at all that no genuine issue of material fact exists for trial. Construction of the civil rules of procedure are grounds for certiorari.

Hickman v. Taylor, 329 U.S. 495 (1947), Schlagenhauf v. Holder, 379 U.S.104,109 (1964). Such unbalanced rules are fundamental denial of due process and equal protection, particulatrly for a pro se litigant. Discovery is now absolutely necessary to avoid summary judgment,

14. Alternatively, If the Above Actions Are Not "So far departed from the Accepted and Usual Course of Judicial Proceedings As to Call for an Exercise of This Court's Supervision", then are said usual and accepted course of proceedings not in themselves a denial of equal protection and due process?

In addition to the reasons above, if this court conduct, including an apparant clandestine meeting between Counsel and District Court Judge, slight of hand wih respect to time extensions to Appellees, delay and improper response to discovery requests coupled with hastily railroaded summary judgment actions, whipsawing

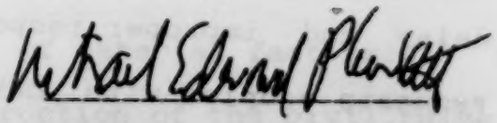
dismissal without prejudice by one tribunal into res judicata effect in another, judges ignoring their statuatory duty to recuse themselves per 28 U.S.C. 455(a)(b)(c) etc., hastily decided and issued Appellate Memorandum ignoring facts, misstating others and ignoring Questions presented for review constitute denial of due process and equal protection in themselves, . This is of national concern to either those who have dared to take on the goliaths of finance.

Rule 14.1 (k) Appendix (Filed Separately).

Conclusion

For all the above reasons, Certiorari must be granted.

Respectfully submitted this 16th day of October, 1990 from Manhattan Beach, California.



Michael Edward Plunkett, pro se, Petitioner, on his own behalf and on

behalf of his partnership interests in Lane + Knorr + Plunkett Investment Company and Lane + Knorr + Plunkett Architects and Planners.